

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL CASE NO. 3:09-CV-295-GCM-DCK**

COFFEY CREEK ASSOCIATES)
LIMITED PARTNERSHIP, a South)
Carolina limited partnership,)
))
Plaintiff,)
v.)
))
GUARDIAN PROTECTION)
SERVICES, INC.; GUARDIAN)
PROTECTION SERVICES - TEXAS,)
LLC; HARVEY W. BERRY; and)
RONALD L. BOWDEN, Trustee of the)
Donald Oliver Voting Trust,)
))
Defendants.)
_____)
_____)

MEMORANDUM AND ORDER
AND RECOMMENDATION

THIS MATTER IS BEFORE THE COURT on the “Joint Motion To Set Briefing Schedule And Stay Initial Attorneys’ Conference” (Document No. 30). This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and immediate review is appropriate. Having carefully considered the motion and the record, the undersigned will grant the motion with modification, and recommend that any pending motions to dismiss be denied without prejudice.

The instant motion was filed jointly and seeks a briefing scheduling for Defendants’ motions to dismiss and a stay of the Initial Attorney’s Conference. As an initial matter, the undersigned notes that Defendants’ motions to dismiss (Document No. 1-2) were filed in state court and attached to the Notice of Removal, but have never been docketed with this Court as pending motions. These motions to dismiss, filed by Defendants Ronald L. Bowden and Guardian Protection Services, Inc. and Guardian Protection Services - Texas, LLC, in March 2009, are inconsistent with the

requirements of the Local Rules. Furthermore, it does not appear that Defendant Berry has filed a motion to dismiss.

In the interest of docket clarity and judicial economy, the undersigned will recommend that any currently pending motions to dismiss be denied without prejudice to re-file. Furthermore, the undersigned will grant the relief the parties seek in their joint motion – namely, an order scheduling the briefing of motions to dismiss and a stay of the Initial Attorney’s Conference. In addition, this Order *sua sponte* allows any Defendant to file, or re-file, a motion to dismiss consistent with the requirements of the Local Rules. Responses and replies to any motions will be allowed pursuant to Local Rule 7.1(E).

IT IS, THEREFORE, ORDERED that the “Joint Motion To Set Briefing Schedule And Stay Initial Attorneys’ Conference” (Document No. 30) is **GRANTED** with modification; Defendants may file or re-file motions to dismiss with briefs in support, consistent with the Local Rules, on or before **September 17, 2010**.

IT IS FURTHER ORDERED that the requirement of an Initial Attorney’s Conference will be **STAYED** until joinder of the issues pursuant to Local Rule 16.1(D), unless otherwise ordered by the Court.

IT IS RESPECTFULLY RECOMMENDED that any currently pending motions to dismiss (Document No. 1-2) be **DENIED WITHOUT PREJUDICE**.

NOTICE OF APPEAL RIGHTS

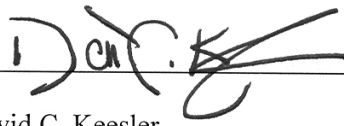
The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within fourteen (14) days of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections.

Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk is directed to send copies of this Memorandum And Order And Recommendation to counsel for the parties and the Honorable Graham C. Mullen.

IT IS SO ORDERED AND RECOMMENDED.

Signed: September 3, 2010



David C. Keesler
United States Magistrate Judge

